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No. 88-1820

In The

Supreme Court Of The United States

OCTOBER TERM, 1988

CHARLES MEBANE
Petitioner,

v.

STATE OF CONNECTICUT
Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE CONNECTICUT APPELLATE COURT

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QUESTION PRESENTED

WAS THE PETITIONER DENIED DUE PROCESS OF LAW AS A RESULT OF A JURY INSTRUCTION RENDERED IN ACCORDANCE WITH SECTION 29-38 OF THE CONNECTICUT GENERAL STATUTES WHICH PENALIZES "ANY PERSON WHO KNOWINGLY HAS, IN ANY VEHICLE OWNED, OPERATED OR OCCUPIED BY HIM, ANY WEAPON FOR WHICH A PROPER PERMIT HAS NOT BEEN ISSUED?"

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STATUTES

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CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

Fourteenth Amendment to the Constitution of the United States

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Rule 17.1, Revised Rules of the Supreme Court of the United States

A review on writ of certiorari is not a matter of right, but of sound

judicial discretion, and will be granted only when there are special and important reasons thereof. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

OPINION BELOW

The Opinion of the Connecticut Appellate Court in State v. Mebane is reported at 17 Conn. App. 243, 551 A.2d 1268 (1989), and is reprinted in the appendix to the petitioner's brief at 2a. The Connecticut Supreme Court denied a petition for certification on February 9, 1989. State v. Mebane, 210 Conn. 811 (1989). A copy of that order is reprinted in the appendix to the petitioner's brief at 15a.

STATEMENT OF THE CASE

Following a trial to a jury in the Connecticut Superior Court, the petitioner was found guilty of violating Connecticut General Statutes §29-38. The statute imposes criminal liability on "[a]ny person who knowingly has, in any vehicle owned, operated or occupied by him, any weapon for which a proper permit has not been issued ...." On January 3, 1989, the Connecticut Appellate Court unanimously affirmed the petitioner's convictions.

In his appeal to the Connecticut Appellate Court, the petitioner claimed that the term "knowing has" as used in §29-38 means "some type of possession," and that, by not so instructing the jury, the trial court eliminated an essential element of the crime. See

Petition at 21-22. The Connecticut Appellate Court rejected the defendant's claim "that the language 'knowingly has,' as set forth in the statute, means 'knowingly possesses.'" State v. Mebane, 17 Conn. App. at 245. The Appellate Court recognized that the statute is directed at those who own, operate or occupy a vehicle knowing that a weapon is inside. Id. at 245-46. The court reasoned that a construction of §29-38 which focused on possession or ownership of a weapon "would unnecessarily limit the scope of the statute ... [and] thwart its purpose." State v. Mebane, 17 Conn. App. at 246. The court went on to conclude that the trial court correctly charged the jury on the essential elements of that offense of having a weapon in a motor vehicle. Id.

A petition for certification to appeal from the decision of the Connecticut Appellate Court was denied by the Connecticut Supreme Court on February 9, 1989.

REASONS FOR DENIAL OF THE PETITION

The Connecticut Appellate Court's Conclusion That The Term "Knowingly Has" As Used In Section 29-38 Of The Connecticut General Statutes Does Not Require Proof Of Possession Or Ownership Of A Weapon In A Vehicle Did Not Deprive The Petitioner Of Due Process And, Therefore, His Claim Is Insubstantial On The Merits

The petitioner claimed in his appeal to the Connecticut Appellate Court that §29-38 requires proof of "some type of possession." See Petition at 21-22. The Appellate Court refused to interpret the phrase "knowingly has" as used in the statute in the narrow manner suggested by the petitioner.

The petitioner now attempts to transform his displeasure with the Connecticut Appellate Court's interpretation of §29-38 into a due process claim worthy of review by this Court based on his contention that the state court "construed the statute to have no act, or failure to act component." Petition at 26. However, examination of the state court proceedings as presented in the petition reveals that the defendant's claim is insubstantial on the merits and should not be reviewed.

In its instructions to the jury, the relevant portions of which are reprinted in the appendix to the petitioner's brief, the trial court emphasized that the state was required to prove that the petitioner occupied or operated a vehicle knowing that there was an

unregistered weapon inside. Petitioner's Appendix at 17a-19a. The trial court also instructed that the requirement that the petitioner "knowingly have" a weapon inside the vehicle "does not necessarily mean that one must have the weapon upon his person, or even within his reach." Id. at 18a.

The Connecticut Appellate Court determined that these instructions to the jury were proper. In rejecting the petitioner's contention that possession or ownership of a weapon was required, the Appellate Court properly determined that the statute is directed at those individuals who own, operate or occupy a vehicle knowing that an unregistered weapon is inside. See State v. Mebane, 17 Conn. App. at 245-46.

In interpreting the statute and

assessing the propriety of the trial court's instructions, the Appellate Court did not, as the petitioner suggests, dispense with an "act component." Rather, the Appellate Court simply indicated that the defendant's interpretation of the phrase "knowingly has" unnecessarily limited the scope of the §29-38. State v. Mebane, 17 Conn. App. at 246. The Appellate Court's analysis and findings in this regard are eminently reasonable, and present no important question of federal law which this Court should review. See U.S. S.Ct. R.17.1(c).

The petitioner's reliance on Ulster County Court v. Allen, 442 U.S. 140, 99 S.Ct. 2213, 60 L.Ed.2d 777 (1979) in support of his claim that he was denied due process is unfounded. At issue in

Ulster was the constitutionality of a statutory provision which permitted a presumption of illegal possession of a firearm by all occupants of an automobile based solely on evidence of the presence of the firearm in the vehicle.

No such presumption was at issue in this case. According to the Connecticut statute, the state was required to prove beyond a reasonable doubt that the petitioner "knowingly had" an unregistered weapon inside a vehicle. See Connecticut General Statutes §29-38. The jury in this case was so instructed, and was not entitled to presume the existence of any of the statutory elements.

The sole question raised by this petition is whether the state courts properly determined the scope of the phrase "knowingly has" as used in §29-

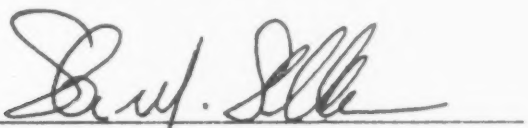
38. This question fails to present any special and important reasons warranting the issuance of a writ of certiorari. See U.S. S.Ct. R.17.1. The petitioner's claim is therefore insubstantial on the merits and should not be reviewed.

CONCLUSION

For the foregoing reasons, the State of Connecticut respectfully urges this Court to deny the petition.

Respectfully submitted,

STATE OF CONNECTICUT

BY: 

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